In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 255

UNITED STATES, PETITIONER

v.

U. S. THERMO CONTROL CO. AND
THERMO KING CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY BRIEF TO THE BRIEF IN OPPOSITION

Respondents' entire argument rests upon an erroneous assumption as to the basic scope of the two excise tax provisions involved in this case. Their major premise, explicitly or implicitly reiterated throughout the brief in opposition (pp. 1, 2, 3, 4, 6, 7, 8, 9, 10, 12), is that in 1932 Congress levied two separate and mutually exclusive categories of excise taxes: one upon "automotive equipment" and the other with re-

spect to "refrigeration equipment" (Brief in Op. p. 2). From this premise they argue that because since 1932, except for the single year 1941-1942, Congress has limited the "tax on refrigeration" (Br. in Op., p. 2) to household type refrigerators, truck refrigeration equipment has remained wholly exempt from excise taxation (except for that year).

As we demonstrated in the petition, however, the premise is unsound. Congress in 1932 did not create the dichotomy which respondents ascribe to it. Congress imposed a broad two percent excise tax upon automotive "parts and accessories"—a phrase substantially identical to that in earlier revenue acts which this Court only two years before, in effect, had held to cover "articles primarily adapted for use in motor vehicles * * *" (see *Universal Battery Co.* v. *United States*, 281 U.S. 580, 584)—and also imposed a five percent tax upon a specific product: household refrigerators. But it did not thereby create another broad category of taxable products—"refrigeration equipment"—which excluded truck equipment. Neither the language of the 1932 legislation nor its legislative history suggests—let alone establishes—that by imposing a separate tax upon household refrigerators, Congress intended to exempt other refrigeration equipment from the lesser tax on automotive "parts and accessories." Respondents do not deny that if the latter words are given their normal meaning, they are just as applicable to truck refrigeration equipment as to any other equipment designed for truck use; and since there is no indication that Congress did not use

the words in their normal sense, they do cover truck refrigerator equipment—as the Service consistently has held for 35 years (see the petition, pp. 8-10).

There is similarly no basis for the alternative argument that Congress, by extending the tax on household refrigerators to cover commercial ones for a brief period early in World War II, gave truck refrigeration equipment a complete exemption from the lesser excise tax upon automotive parts and accessories when, a few months later, it again limited the tax on refrigerators to the household variety.

Indeed, if Congress ever intended to single out refrigeration equipment for an exemption from the general excise tax on automotive parts and accessories, it is difficult to comprehend why it never said a word to that effect, or why the industry failed to claim such an exemption for as long as 30 years.

Respectfully submitted.

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